



SRBIJA / SERBIA

DA LI OGRANKU STRANOG PRAVNOG LICA TREBA PRIZNATI SVOJSTVO STRANKE U POSTUPKU?

SHOULD A BRANCH OFFICE OF A FOREIGN LEGAL ENTITY BE RECOGNIZED AS A PARTY IN THE PROCEEDINGS?

Primarni razlog vrlo česte dileme u praksi da li ogranku stranog pravnog lica treba priznati svojstvo parnične stranke u sporovima pred domaćim sudovima, leži u odredbi Zakona o privrednim društvima koja propisuje da ogranak nema svojstvo pravnog lica, te da u pravnom prometu istupa u ime i za račun privrednog društva.

Iako su u praksi povodom ovog pitanja zauzimani različiti stavovi, od velikog značaja je stav koji je Vrhovni kasacioni sud („VKS“) zauzeo u svom rešenju iz oktobra 2021. godine da se ogranku stranog pravnog lica treba priznati svojstvo stranke u parničnom postupku.

Naime, predmetno rešenje VKS je doneo u postupku po reviziji tužioca – bivšeg zaposlenog koji je pokrenuo sudski spor protiv svog poslodavca – ogranka stranog pravnog lica, radi poništaja rešenja o otkazu ugovora o radu.

The primary reason for the very common dilemma in practice, whether a branch office of a foreign legal entity should be recognized as a party in disputes before domestic courts, lies in the provision of the Company Law which stipulates that the branch office does not have the status of a legal entity, and that in legal transactions it acts in the name and on behalf of the company.

Although different positions on this issue have been taken in practice, of great importance is the position taken by the Supreme Court of Cassation (“SCC”) in its decision from October 2021 stating that a branch office of a foreign legal entity should be recognized as a party in civil proceedings.

Namely, the SCC issued the decision in the procedure after the revision of the plaintiff - a former employee who initiated a court dispute against his employer - a branch office of a foreign legal entity, for annulment of decision on termination of the employment agreement.

O različitosti stavova svedoči činjenica da je u predmetnom postupku prvostepeni sud odbacio tužbu tužioca uz obrazloženje da se tužba ne može podneti protiv ogranka stranog pravnog lica jer isti nema svojstvo pravnog lica, pa posledično ne može imati ni stranačku sposobnost. Drugostepeni sud je takođe potvrdio ovakvu odluku prvostepenog suda.

Suprotno, VKS zauzima stav da se ogranku stranog pravnog lica u konkretnom slučaju može priznati svojstvo stranke u postupku po osnovu sledećih odredbi relevantnih zakona:

- Zakonom o privrednim društvima propisano je da se ogranak domaćeg i stranog privrednog društva registruje u skladu sa zakonom o registraciji;
- Zakonom o spoljnotrgovinskom poslovanju propisano je da se domaćim licem, u smislu ovog zakona, smatra pravno lice, ogranak domaćeg i stranog pravnog lica i preduzetnik koji imaju sedište, odnosno koji su registrovani u Republici Srbiji;
- Zakonom o deviznom poslovanju propisano je da se rezidentom smatra i ogranak stranog pravnog lica upisan u registar kod nadležnog organa u Republici Srbiji;
- Zakonom o računovodstvu propisano je da ogranci stranih pravnih lica vode poslovne knjige i sastavljaju finansijske izveštaje na isti način kao i domaća pravna lica, dok u pogledu poreskih propisa ogranak stranog pravnog lica primenjuje propise koji se odnose na domaća pravna lica i poreski je obveznik.

Imajući u vidu napred navedene odredbe relevantnih zakona, VKS je iskoristio ovlašćenje koje je sudovima dato Zakonom o parničnom postupku, da izuzetno, sa dejstvom u određenoj parnici, prizna svojstvo stranke i onim oblicima udruživanja i organizovanja koji nemaju stranačku

The diversity of positions is testified by the fact that in the above-mentioned case the first instance court rejected the plaintiff's lawsuit, stating that the lawsuit cannot be filed against a branch office of a foreign legal entity because it does not have the status of a legal entity, and consequently cannot have capacity to be a party. The second instance court also upheld this decision issued by the first instance court.

On the contrary, the SCC takes the position that a branch office of a foreign legal entity in in this specific case may be recognized as a party to the proceedings on the basis of the following provisions of the relevant laws:

- The Company Law stipulates that a branch office of a domestic and foreign company is registered in accordance with the law on registration;
- The Law on Foreign Trade Operations stipulates that a domestic person, in terms of this law, is a legal entity, a branch office of a domestic and foreign legal entity and an entrepreneur who has their registered seat or is registered in the Republic of Serbia;
- The Law on Foreign Currency Operations stipulates that a branch office of a foreign legal entity registered with the competent authority in the Republic of Serbia is also considered a resident;
- The Law on Accounting stipulates that branch offices of foreign legal entities keep business books and prepare financial statements in the same way as domestic legal entities, while in terms of tax regulations the branch office of foreign legal entities applies regulations relating to domestic legal entities and is a taxpayer.

Having in mind the above provisions of the relevant laws, the SCC used the authority given to the courts by the Civil Procedure Law to exceptionally, with effect in a certain litigation, recognize the status of a party to those forms of association and organization that do not have capacity to be a party if in the regard to

sposobnost, ukoliko utvrdi da, s obzirom na predmet spora, „ispunjavaju bitne uslove za sticanje stranačke sposobnosti, a naročito ako raspolažu imovinom na kojoj se može sprovesti izvršenje“.

Dodatno, interesantno je i to da VKS smatra da bi odbacivanjem tužbe zbog nepriznavanja svojstva stranke ogranku stranog pravnog lica kao tuženom, tužiocu zapravo bilo povređeno Ustavom garantovano pravo na pravnu zaštitu za slučaj prestanka radnog odnosa. U tom smislu, VKS izričito navodi da bi u tom slučaju „tužiocu ostvarenje ovih prava bilo znatno otežano, može se reći i uskraćeno“.

Dakle, shodno stavu VKS-a, ukoliko nižestepeni sudovi ubuduće ne budu priznavali svojstvo stranke ogranku stranog pravnog lica, a pogotovu u postupcima koji se odnose na zaštitu prava usled prestanka radnog odnosa, može doći do povrede Ustavom garantovanih prava, pri čemu bi položaj zaposlenih, kao ekonomski slabije strane u odnosu na poslodavca, bio znatno otežan.

Svakako, ostaje da vidimo da li će ovakav stav VKS-a postati preovlađujući u našoj sudskoj praksi, te da li će se ogranci stranih pravnih lica, koji ispunjavaju bitne uslove za sticanje stranačke sposobnosti, ubuduće češće pojavljivati kao stranke u postupcima pred domaćim sudovima.

the subject matter of the dispute they “*meet the essential conditions for acquiring party capacity, especially if they have assets on which enforcement can be carried out*”.

In addition, it is interesting that the SCC considers that rejecting the lawsuit due to non-recognition of party status to a branch office of a foreign legal entity as a defendant would violate the constitutionally guaranteed right to legal protection in case of termination of employment. In that sense, the SCC explicitly states that in that case “*the realization of these rights would be significantly more difficult for the prosecutor, even in other words denied*”.

Therefore, pursuant to CSS’ stance, if in the future lower instance courts do not recognise the status of a party to a branch office of a foreign legal entity, and especially in proceedings related to the protection of rights due to termination of employment, there may be violations of the constitutionally guaranteed rights, whereby the position of employees, as an economically weaker party compared to the employer, would be significantly more difficult.

Certainly, it remains to be seen whether this position of the CSS will become prevalent in our judicial practice, and whether the branch offices of foreign legal entities, which meet important conditions for acquiring party capacity, shall appear more often as parties in cases before domestic courts in the future.

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